

### **REMARKS**

Reconsideration of the present application is respectfully requested.

#### **Summary of Office Action**

Claims 50-55, 58-59, 63-66, 69-70, 73-80 and 82-83 stand rejected under 35 U.S.C. 102(a) based on U.S. Patent No. 6,014,700 of Bainbridge et al. ("Bainbridge").

Claims 56 and 67 stand rejected under 35 U.S.C. 103(a) based on Bainbridge in view of U.S. Patent No. 6,061,504 of Tzelnic et al. ("Tzelnic").

Claims 60-61 and 71-72 stand rejected under 35 U.S.C. 103(a) based on Bainbridge in view of U.S. Patent No. 5,649,099 of Theimer et al. ("Theimer").

Claim 62 stands rejected under 35 U.S.C. 103(a) based on Bainbridge in view of "Luk, Shun Hang (hereinafter Luk) U.S. Publication No. 20060195616"<sup>1</sup>.

Claims 57, 68 and 81 stand rejected under 35 U.S.C. 103(a) based on Bainbridge in view of U.S. Patent No. 5,138,712 of Corbin ("Corbin").

#### **Summary of Examiner Interview**

A telephonic interview was conducted between the Examiner and Applicants' representative (the undersigned) on 2/4/2010. Claims 50, 63 and 73 were discussed. In particular, Applicants' representative presented arguments why claims 50, 63 and 73 are patentable over the cited art; those arguments are substantially reflected in the

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<sup>1</sup> This appears to be an erroneous citation by the Office, as the publication number does not match the named inventor.

remarks below. Agreement was reached that amending the term "storage server" to "network storage server" would help to clarify the claims. No further agreement was reached.

Applicants note that this amendment is not necessary to distinguish the claims from the currently cited art (Bainbridge), since there are multiple reasons why the claims are distinguishable from the cited art, as explained below. Accordingly, if the next Office Action asserts a new ground of rejection, such Office Action should *not* be made *final*.

#### Summary of Amendments

In this response claims 50, 51, 55-59, 62-64, 67-70, 73-77, 79 and 80 have been amended. No claims have been canceled or added.

#### Discussion of Rejections

Applicants respectfully traverse the rejections, for the reasons stated below.

The present invention generally relates to a technique for controlling the servicing of client requests received by a network storage server. A concern of the present invention is that, in a storage network with multiple clients, unbridled access and control of a network storage server's processes may have a negative impact on its performance. Therefore, the present invention provides that, when receiving a client request, the *network storage server determines whether or not to invoke* a policy engine according to a specified criterion of the policy engine. The policy engine is an element that applies a policy. If the client request satisfies a specified criterion associated with a

specified policy of the policy engine, the network storage server invokes the policy engine to cause the policy engine to apply the policy to satisfy the client request. If the client request does not satisfy a specified criterion associated with a specified policy of the policy engine, the network storage server satisfies the client request without invoking the policy engine.

### Claim 50

Bainbridge fails to disclose several limitations of claim 50, and therefore, fails to anticipate the invention of claim 50. Moreover, the features and functions which the Office cites in Bainbridge are not arranged the same way as in Applicants' claims.

First, the Office Action improperly cites bits of disclosure in Bainbridge that are *unrelated* to each other and therefore *not arranged the same way as an Applicants' claims*. "To anticipate a claim, the elements in the prior art must be *arranged in the same way as recited in the claim . . .*" *Net Money/IN Inc. v. VeriSign Inc.*, Slip Opinion No. 07-1565 (Fed. Cir. 10/20/08) (emphasis added). "The reference must clearly and unequivocally disclose the claimed [invention] or direct those skilled in the art to the [invention] without *any* need for picking, choosing, and combining various disclosures *not directly related to each other* by the teachings of the cited reference." *Id.* (emphasis added); see also *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Here the Office cites Bainbridge at col. 5, lines 41-49 for the claim element, "if the request is determined to satisfy a specified criterion . . ." (Office Action, p. 3.) Column 5, lines 41-49 in Bainbridge is clearly disclosed as being what Bainbridge considers to be *prior art* (see the first line of that paragraph). On the other hand, the Office cites col. 3,

lines 36-39 & 36-39, col. 4, lines 63-67 and col. 5, lines 65-67, all of which clearly relate to what Bainbridge considers to be his alleged *invention*. In other words, the elements, features and functions in Bainbridge which the Office cites are *not* all implemented *together* and therefore are *not arranged as in Applicants' claims*. For at least this reason, therefore, the rejection is improper and should be withdrawn.

Second, claim 50 recites numerous actions being performed at, by, or in a *network storage server* (e.g., "receiving at a network storage server, from a network storage client, . . .", etc). Bainbridge does not disclose or suggest a *storage server*, much less a *network storage server*. Bainbridge discloses the use of generic "servers" and "server computers" 20 (and generic "clients" and "client computers"; see Figs 1 and 2). However, the mere general disclosure of a "server" or "server computer" does not imply or suggest any *specific type* of server, such as a *network storage server*. As is well known in the art, and according to the ordinary meaning of the term, a network storage server is a special-purpose server that provides network storage services for one or more clients. Bainbridge does not disclose or suggest a *network storage server* or, for that matter, a *network storage client*. Accordingly, Bainbridge also does not disclose or suggest any of the limitations in claim 50 that recite a network storage server or a network storage client. For this additional reason, therefore, Bainbridge does not anticipate claim 50.

Third, it is not clear what element in Bainbridge the Office considers to be the "policy engine" of Applicants' claims, but under the most likely interpretations that Applicants' can identify, the Office's attempt to map Bainbridge onto Applicants' claim language fails. It appears the Office might be considering either the "gateway" (or

"router") mentioned at col. 3, lines 14-18; col. 5, line 62 of Bainbridge to be the "policy engine" or perhaps the "server groups unit 44" mentioned at col. 6, lines 28-44 (Fig. 2) of Bainbridge. In either case, the Office's attempted mapping is erroneous, for the following reasons.

Claim 50 recites that the *storage server determines whether to invoke* a policy engine, depending on the outcome of a *condition* (the "if-then" clauses). Note that the policy engine is the element that actually *applies* a policy according to claim 50 (see the "sending" element in claim 50). Bainbridge does not disclose or even suggest *conditionally* invoking a policy engine (i.e., *conditionally* applying a policy) as recited in claim 50.

For example, assuming *arguendo* the *gateway* (or router) mentioned in Bainbridge's description of the prior art (col. 3, lines 14-18) is considered to be or include the policy engine, there is no disclosure or suggestion in Bainbridge that the prior art gateway or router invoked the policy engine (i.e., applied the policy) *conditionally*, i.e., *only under certain conditions but not others*, as in claim 50. Similarly, there is no disclosure or suggestion that where a gateway was used, only some requests but not others were sent to the gateway from the client. Furthermore, because the gateway (or router) is mentioned as part of Bainbridge's description of the prior art, it is not related to and *cannot be cited in combination with* the other cited sections of Bainbridge, which relate to Bainbridge's alleged invention (as noted above).

On the other hand, if the Office considers the server groups unit 44 in Bainbridge to be the policy engine, the same analysis applies: In contrast with claim 50, in

Bainbridge the policy apparently is applied in response to *every request* from the client application program 40 (see col. 6, lines 4-10) (while Bainbridge does not explicitly state it is done in response to every request, Bainbridge does not mention or imply any exceptions). Thus, Bainbridge does not disclose or suggest invoking a policy engine *conditionally* as recited in claim 50. For at least this additional reason, therefore, claim 50 and all claims which depend on it thought to be patentable of the cited art.

Fourth, in claim 50 the determination of whether to invoke the policy engine is made *in a server* (i.e., a *network storage* server). To the extent the Office may consider the server groups unit 44 in Bainbridge to be the policy engine, the rejection fails because the server groups unit 44 is implemented entirely *within the client* (see Fig. 2). Indeed, all of the significant functions in Bainbridge's description of the alleged invention are *within the client*. So assuming *arguendo* there is a conditional invocation of the policy engine in Bainbridge per claim 50, the *determination* of whether to invoke it would be *in the client*, not in a server per claim 50. On the other hand, to the extent the Office may consider the gateway to be the policy engine, any *determination* of whether to invoke it (again assuming *arguendo* it is conditional) would also be *in the client*, not in a server per claim 50. For at least this additional reason, therefore, claim 50 and all claims which depend on it thought to be patentable of the cited art.

### Claim 63

Claim 63 essentially includes the above-mentioned limitations of claim 50, and therefore, claim 63 and all claims which depend on it are thought to be patentable over the cited art for at least reasons similar to those discussed above.

Additionally, claim 63 recites that the policy engine is "implemented as a dedicated application server separate from the network storage server". Bainbridge does not disclose or suggest any policy engine which is invoked by a storage server *and* which is implemented as a dedicated application server separate from the storage server. For at least this additional reason, therefore, claim 63 and all claims which depend on it are thought to be patentable over the cited art.

### Claim 73

Claim 73 essentially includes the above-mentioned limitations of claim 50, and therefore, claim 73 and all claims which depend on it are thought to be for at least reasons similar to those discussed above regarding claim 50.

Additionally, claim 73 cites "a plurality of policy engines, each coupled to communicate with each of the [plurality of] network storage servers." Bainbridge does not disclose or suggest such an architecture. Bainbridge shows a plurality of servers (again, not storage servers), but there is no disclosure or suggestion of a *plurality of policy engines*, much less that *each* such policy engine is coupled to communicate with *each* of the storage servers. For at least this additional reason, therefore, claim 73 and all claims which depend on it are thought to be patentable over the cited art.

Applicants have not necessarily discussed here every reason why every pending independent claim is patentable over the cited art; nonetheless, Applicants are not waiving any argument regarding any such reason or reasons. Applicants reserve the

right to raise any such additional argument(s) during the future prosecution of this application, if Applicants deem it necessary or appropriate to do so.

#### Dependent Claims

In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.



CONCLUSION

For the foregoing reasons, the present application is believed to be in condition for allowance, and such action is earnestly requested. The Director is authorized to charge Deposit Account 50-2207 for any fees associated with this submission.

Respectfully submitted,

Dated: February 4, 2010

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